



Competitive Carriers Association
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Competitive Carriers Association

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March 22, 2016

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **NOTICE OF EX PARTE**
GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*
WT Docket No. 12-269: *Policies Regarding Mobile Spectrum Holdings*
AU Docket No. 14-252: *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002*
MB Docket No. 15-146: *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones*

Dear Ms. Dortch:

Small businesses and competitive carriers are poised to benefit from investment opportunities that will flow from increasing the amount of spectrum available for licensed and unlicensed wireless networks. Competitive Carriers Association (CCA),¹ which represents the competitive wireless industry, urges the Federal Communications Commission (FCC or Commission) to move forward and finalize its decision to allow certain broadcast operations to be reassigned to channels within the duplex gap during the repacking process.² Under these conditions, CCA agrees with the Commission's findings that the proposed vacant channels would not impose

¹ CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. The vast majority of CCA's members serve less than 500,000 subscribers. Many of CCA's members are small businesses that create high-paying jobs in their local communities. Just as important, most of CCA's members deploy wireless networks in rural, hard-to-serve parts of the country and oftentimes a CCA member's network is the only mobile broadband infrastructure in an area.

² *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 9105, ¶¶ 284-285 (2015) (*Auction Procedures PN*).

an undue burden on small entities; rather, small entities have much to gain from the incentive auction.³ Further, the particular needs of LPTV stations have already been addressed throughout the rulemaking process.

I. The FCC's Proposed Vacant Channel Policy Serves the Public Interest and Provides Flexibility for LPTV Stations.

Since 2012, the FCC has engaged the broadcast and wireless industries in a series of rulemakings designed to establish incentive auction rules and the subsequent repacking process. The record is replete with evidence that the FCC has responded to LPTV stations' efforts to shape this auction. Indeed, as a result of the Commission's careful, comprehensive consideration of issues related to LPTV relocation, the repacking process will provide flexibility to accommodate LPTV stations while still allowing for productive new uses of vacated spectrum, and preserving space for use by unlicensed wireless devices.

The Spectrum Act requires the Commission to make all reasonable efforts to preserve the coverage area and population served by eligible broadcast television licensees in the post-auction repacking process.⁴ LPTV and TV translator stations were not afforded the same level of protection as full power and Class A television licensees; Congress chose to define "broadcast television licensee" to include only full-power television stations or a low power stations accorded Class A status.⁵ In the 2014 *Incentive Auction Report & Order*, the Commission recognized that the incentive auction could displace LPTV and TV translator stations.⁶ Taking this into consideration, the Media Bureau opened a special filing window to create a public record addressing LPTV needs and the Commission stated its intention to provide some form of relief to LPTV stations during the repack.⁷ Since then, the FCC has sought comment on several proposals aimed at easing various LPTV station and TV translator pain points.⁸ For example, the *Third Notice* attracted robust participation by stakeholders; in fact, the FCC received more than 100 comments [59 comments, 34 reply comments, and several *ex parte* communications].⁹

³ *Auction Procedures* PN at ¶ 245; see *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 30 FCC Rcd 6711, 6736, Appendix 2, ¶ 4 (referring to small businesses and developers of all kinds, including users and manufacturers of white space and wireless microphone equipment, and LPTV stations) (*Vacant Channel NPRM*).

⁴ See *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, Title VI, 125 Stat. 156, 6403(b)(2) (2012) (*Spectrum Act*).

⁵ *Id.* at § 6001(6)(A),(B).

⁶ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Ass'n of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

⁷ *Id.* at ¶¶ 659-664.

⁸ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (*Third Notice*).

⁹ *Third Notice* at Appendix A.

In its *Application Procedures Public Notice*, the FCC tentatively concluded it would designate a second available television channel in the post-auction television band for unlicensed use only in those areas where the duplex gap is subject to impairment, based on the “significant public interest benefits provided by white space devices and wireless microphones.”¹⁰ The Commission also took steps to mitigate the limited harm to LPTV stations from allocating a second channel in the band to unlicensed use by increasing LPTV stations’ operating flexibility following the auction and helping to ensure that LPTV stations remain on-the-air. For example, the FCC recently adopted rules that extended the LPTV and TV translator digital transition date, allowed LPTV and TV translator stations to enter into channel sharing agreements, and offered to provide LPTV and TV translator stations assistance in finding displacement channels after the incentive auction.¹¹ The FCC also sought comment on whether to allow full power and Class A stations to enter into channel sharing agreements with LPTV and TV translator stations.¹² The LPTV industry will benefit greatly from the operational flexibility the FCC has provided to LPTV stations to mitigate any potential harm resulting from the incentive auction.

Several LPTV stations have nevertheless asked the FCC to postpone the start of the 600 MHz incentive auction until a federal court rules on their challenges to the auction’s rules.¹³ These LPTV stations argue that the public interest “unmistakably favors” a stay.¹⁴ Last week, the U.S. Court of Appeals for the DC Circuit denied Videohouse’s motion for stay pending appeal.¹⁵ In the *Latina Broadcasters of Daytona Beach* case, the Court specifically noted its decision will not delay the incentive auction.¹⁶ With the path cleared to commence the auction on schedule in just one week, the public interest would best be served by all stakeholders working together to make the auction as successful as possible.

II. Small Businesses Will Benefit from Vacant Channel Use and the Incentive Auction.

CCA supports the Commission’s conclusion that a second vacant channel will not burden small entities in terms of either the continued availability of channels in all areas or the administrative requirements of compliance.¹⁷ Small businesses are not only unlikely to be hindered

¹⁰ *Amendment of Part 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, et al.*, Notice of Proposed Rulemaking, 30 FCC Rcd 6711 ¶ 18 (2015).

¹¹ *See Amendment of Part 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, et al.*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927 (2015).

¹² *Id.*

¹³ *See Petition for Stay Pending Judicial Review by Free Access & Broadcast Telemedia, LLC, Word of God Fellowship, Inc. and Mako Communications, LLC*, GN Docket No. 12-268, 1 (filed Mar. 1, 2016).

¹⁴ *Id.* at 23.

¹⁵ *The Videohouse, Inc., et al., v. FCC, et al.*, No. 16-1060 (D.C. Cir. Mar. 18, 2016) (order denying motion for stay).

¹⁶ *Latina Broadcasters of Daytona v. FCC, et al.*, No. 16-1065 (D.C. Cir. Mar. 17, 2016) (order permitting petitioner to participate provisionally in incentive auction, order expediting appeal).

¹⁷ *Action Procedures PN* at ¶ 285.

by a second vacant channel, but also stand to reap economic rewards post-auction as the benefits of increased broadband coverage are realized.

Small businesses create two out of every three new jobs, and investments in broadband infrastructure have fueled small businesses' competitiveness.¹⁸ Smaller wireless operators have eagerly participated in spectrum auctions and deployed significant financial capital to utilize the spectrum they have won at auction. In Auction 73, 99 of the 101 winning bidders were non-nationwide providers and 56 of the non-nationwide bidders were considered small entities.¹⁹ Following that auction, competitive carriers invested approximately \$10 billion in capital expenditures in 2012 alone.²⁰ Enhanced mobile broadband networks that small businesses plan to deploy over 600 MHz spectrum, with the right policies and investments, will allow unserved and underserved communities—particularly in rural areas—to receive comparable services as urban areas and next generation technologies.

Further, the FCC structured the incentive auction to include a spectrum reserve for non-nationwide providers and those with access to less low-band spectrum, which creates a unique opportunity for small businesses, including rural service providers, to access this spectrum.²¹ The rural community, meanwhile, has embraced innovative business sectors like precision agriculture and telehealth. These communities are especially well positioned to make innovative use of the high quality spectrum for auction.²² Indeed, early predictions regarding the technical contours of 5G and widespread implementation of the Internet of Things, which encompasses precision agriculture and

¹⁸ See Karen G. Mills, Former Administrator, U.S. Small Bus. Admin., Remarks at the 2014 America on the Move Summit at Harvard Business School: Why Investing in America's Infrastructure Will Help Our Small Businesses Grow Right Now and Keep Them Competitive for the Future (Feb. 26, 2014) ("Mills Remarks to HBS").

¹⁹ See News Release, FCC, Statement by FCC Chairman Kevin J. Martin on 700 MHz Auction Winners 1 (Mar. 20, 2008), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-280968A1.pdf.

²⁰ See WILLIAM LEHR AND J. ARMAND MUSEY, RIGHT-SIZING SPECTRUM AUCTION LICENSES: THE CASE FOR SMALLER GEOGRAPHIC LICENSE AREAS IN THE TV BROADCAST INCENTIVE AUCTION 6 (Nov. 20, 2013).

²¹ See *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 154 (2014) (*Mobile Spectrum Holdings*; R&O) ("...[W]e will reserve on a contingent basis, licenses covering up to 30 megahertz of spectrum for bidders with spectrum holdings, at the deadline for filing a short-form application to participate in the forward auction, of less than 45 megahertz, on a population-weighted basis, of suitable and available below-1-GHz spectrum in a PEA .").

²² See CoBank, Rural Infrastructure Briefings, *Farmers Harvest Gigabytes with Broadband and Wireless Technology*, Feb. 2016; see also <http://www.rcwireless.com/20160209/internet-of-things/precision-agriculture-helps-farmers-improve-productivity-reduce-risks-tag99-tag23> (last visited Mar. 17, 2016); see also Testimony of Mr. Cory Hunt, Senior Vice President, Intelligent Solutions, John Deere & Company, *Removing Barriers to Wireless Broadband Deployment*, Hearing before the Committee on Commerce, Science, and Transportation, USS (2015), <http://www.commerce.senate.gov/public/cache/files/977348e5-97a7-4de5-8254-babbbaa29d27c/80B933B3840FD22A91CDE0715116B2E.mr.-cory-reed-testimony.pdf> (last visited Mar. 17, 2015); see also Testimony of Mr. Johnathan D. Linkous, American Telehealth Association, *Advancing Telehealth through Connectivity*, Hearing Before the Subc. On Communications, Technology, Innovation and the Internet of the Committee on Commerce, Science and Transportation, USS (2015), http://www.commerce.senate.gov/public/index.cfm/hearings?Id=0C47B88F-41B1-461B-96B6-14B6A82F5632&Statement_id=239EA0D6-83B8-4C65-9C9D-B88B6CA0ED20 (last visited Mar. 17, 2016).

telehealth, suggest pairing high band spectrum with low band spectrum will be a best practice in optimizing millimeter wave technology.²³

Increasing access to both licensed and unlicensed spectrum will help small businesses outside of the wireless industry compete in the larger ecosystem. According to Karen Mills, former administrator of the Small Business Administration, for example, “[h]igh speed broadband is enabling the rise of cloud computing, which is helping small businesses forego the costs of installing and managing hardware and software by buying only what they need from the cloud The cloud services industry grew to \$45 billion worldwide [in 2013], and a big part of that growth came from six million small businesses purchasing their first service through the cloud.”²⁴

CCA’s carrier members need access to the spectrum that will become available through the incentive auction so they can meet their customers’ growing appetites for mobile broadband services. Global mobile traffic is expected to increase nearly eightfold between 2015 and 2019.²⁵ And while licensed spectrum will be critical to meeting this growing demand, unlicensed spectrum will also play an important role as a hot-bed for new services and innovation.²⁶ Similarly, those with business platforms involving unlicensed devices stand to benefit from gaining access to unlicensed TV white space spectrum in the streamlined broadcast band after the auction.²⁷

Increasing licensed and unlicensed spectrum will also result in a boon to the economy. One study recently estimated that the ten-year average results of making 100 MHz of licensed spectrum available for broadband would: (1) raise the U.S. gross domestic product by up to \$31 billion; (2) support up to one million U.S. jobs; (3) increase government revenues by up to \$5 billion; and (4) raise wireless application and content sales by up to \$16 billion.²⁸ Meanwhile the FCC has certified over 20,000 different unlicensed devices for use in the 2.4 GHz spectrum band alone.²⁹

The Commission’s rules and policies regarding vacant channels and LPTV station repacking are carefully crafted to promote broadband deployment and adoption in communities throughout the country by service providers of all sizes. At the same time, the Commission has crafted policies

²³ *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, WT Docket No. 14-177, Notice of Inquiry, 29 FCC Rcd 13020, 13023 ¶ 3 (2014) (“*Spectrum Frontiers NOP*”).

²⁴ Mills Remarks to HBS at 3.

²⁵ *See* CISCO, CISCO VISUAL NETWORKING INDEX: GLOBAL MOBILE DATA TRAFFIC FORECAST UPDATE, 2015-2020 3 (Feb. 3, 2016).

²⁶ *Id.* at 1.

²⁷ *See* Wireless Innovation Alliance, Background on Unlicensed Spectrum, <http://www.wirelessinnovationalliance.org/index.cfm?objectid=70F2AA30-485F-11E1-B23A000C296BA163> (last visited Mar. 8, 2016) (“WIA Unlicensed Background”) (“While there is unlicensed spectrum at other frequencies, the TV White Spaces are uniquely important because their physical properties enable signals to penetrate walls and trees and provide better consumer experiences than those offered in other unlicensed bands.”).

²⁸ RECON ANALYTICS, THE IMPACT OF 10 MHZ OF WIRELESS LICENSED SPECTRUM 2 (Dec. 2015), *available at* <http://www.ctia.org/docs/default-source/default-document-library/for-every-10-mhz.pdf> (last visited Mar. 8, 2016).

²⁹ *See* WIA Unlicensed Background.

which provide LPTV stations ample opportunity for success in the repacking process. With this careful balance in mind, CCA and its members are optimistic about the FCC's ability to maximize the amount of licensed and unlicensed spectrum for consumers' mobile broadband use.

This *ex parte* letter is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please contact me with any questions or concerns.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association